

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3038 of 1997
With
SPECIAL CIVIL APPLICATION No. 3380 of 1997
With
SPECIAL CIVIL APPLICATION No. 3381 of 1997
With
SPECIAL CIVIL APPLICATION No. 3383 of 1997
With
SPECIAL CIVIL APPLICATION No. 7247 of 1997
With
SPECIAL CIVIL APPLICATION No. 2292 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SHILPA D CHHAYA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

Mr Dhiren Mehta for MR PV HATHI for Petitioner(s) : 1,
Ms A C Raval, ASST.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/10/2006

ORAL JUDGMENT

1. As common question of law and facts arises in all these petitions, they are being disposed of by this common judgment and order.
2. Heard Shri Dhiren Mehta, learned advocate appearing for Shri P.V.Hathi, learned advocate appearing for respective petitioners of Special Civil Application No. 3038 of 1997, Ms.Sutariya learned advocate appearing for Shri V.H.Desai for respective petitioners of Special Civil Application Nos.3380 of 1997, 3381 of 1997 and 3383 of 1997 and also heard Shri D.P.Vora, learned advocate appearing in Special Civil Application No.7247 of 1997 and Shri Paresh Upadhyay, learned advocate appearing for and on behalf of the petitioner of Special Civil Application No.2292 of 1998.
3. In Special Civil Application No.3038 of 1997, the petitioner has prayed for an appropriate order directing the respondent nos.1 and 2 to continue the petitioner in services as

'Lecturer' in Physics on regular basis and not to terminate her services at the end of academic term ending on 26.4.1997.

In Special Civil Application No.3380 of 1997, the petitioner has prayed for an appropriate order quashing and setting aside the action of the respondents in terminating the services of the petitioner. A further prayer is also made to direct the respondents to regularize the services of the petitioner as Lecturer (Physics) from the date of joining in the services with the respondent no.3 college with all consequential and incidental benefits.

In Special Civil Application No.3381 of 1997, the petitioner has prayed for an appropriate writ, order or directions, by quashing and setting aside the action of the respondents in terminating the services of the petitioner. A further prayer is also made to direct the respondents to regularize the services of the petitioner as Lecturer (Maths) from the date of joining in the service with the respondent no.3-College with all consequential

and incidental benefits.

In Special Civil Application No.3383 of 1997 the petitioner has prayed for an appropriate writ, order or directions, by quashing and setting aside the action of the respondents in terminating the services of the petitioner. A further prayer is also made to direct the respondents to regularize the services of the petitioner as Lecturer (Electronics) from the date of joining in the service with the respondent no.3-College with all consequential and incidental benefits.

In Special Civil Application No.7247 of 1997, the petitioner has prayed for an appropriate order directing the respondents not to terminate the services of the petitioner till regularly selected candidates by GPSC are made available. The petitioner has also further prayed for appropriate consequential orders.

In Special Civil Application No.2292 of 1998, the petitioner has prayed for an appropriate order of quashing and setting aside

the circular dated 02.01.1998 issued by the Commissioner of Higher Education. It is also further prayed for an appropriate order directing the respondents to allow the petitioners to continue to work at the post of Lecturer on which the petitioners are working till the regular selected candidates are appointed on the post.

4. It is not in dispute that the appointment of all the petitioners were on ad-hoc and purely temporary basis till the regularly selected candidate is available.

5. Ms. Archana Rawal, learned Assistant Government Pleader has submitted that the dispute is now covered by the decision of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi** and others reported in (2006) 4 SCC 1 as well as the decision of Division Bench of this Court in the case of **K.D Vora Vs. K.G.Patel** reported in 2003 (2) GLR 1343. Considering the above position and considering that as such respective petitioners have no

right to pray for a regularization as their appointments were made on ad-hoc basis till the regularly selected candidate is available and in view of the decision of the Division Bench of this Court in the case of **K.D Vora Vs. K.G.Patel (Supra)**, it is requested by the learned advocate appearing on behalf of respective petitioners to direct the respondents to continue the respective petitioners till the regularly selected candidate is available and appointed. They have requested to pass an appropriate order in terms of direction issued by this Court in the case of **K.D Vora Vs. K.G.Patel (Supra)**. At this stage, Ms.Archana Rawal, learned AGP has submitted that there cannot be any difficulty if such an order is passed. However, she has submitted that looking to the workload and considering administrative exigencies if a Lecturer is required to be transferred and posted at the place where the petitioner are serving, then liberty be reserved in favour of the State Government. It will open for the State Government and/or the appropriate authority to fill-up a post either by the regular selection

and/or by transfer. It is also further submitted by her that due to non-availability of the work and/or considering workload if the services of the petitioners are not required, in that case liberty may also be reserved in favour of the State Government and/or Appropriate Authority to relieve the respective petitioners.

6. Considering the above and considering the decision of the Division Bench of this Court in the case of **K.D Vora Vs. K.G.Patel (Supra)** as well as one another order passed by the Division Bench of this Court dated 08.07.2005 passed in Letters Patent Appeal No.672 of 2005 and other cognate appeals while disposing of the present group of petitions, following directions are issued.

(i) The respondents are directed to continue the respective petitioners in services on purely ad-hoc basis till the regularly selected candidate is available and appointed. However, it will be open for the State Government and/or the concerned department and/or authority to fill up the post occupied by the respective petitioners by way of transfer considering the

administrative exigencies and to relieve the petitioners. It will also be open for the State Government and/or Concerned Department and/or authority to consider the workload and if ultimately it is found that there is less workload and there is no requirement of the petitioners, in that case, it will be open for the State Government and/or appropriate Authority/department to relieve the respective petitioners by passing an appropriate order.

7. Subject to the aforesaid directions, all the petitions are accordingly disposed of. Rule is discharged in each of the petitions. However, there shall be no order as to costs. Interim relief granted earlier stands vacated subject to the aforesaid directions.

(M.R.SHAH, J.)

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